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Supreme Court

OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

Index 11141—1967

FREDERICK WALZ,

Plaintiff-Appellant,

—against—

TAX COMMISSION OF THE CITY OF NEW YORK,

Defendant-Respondent.

Statement Under Rule 5531 CPLR

1. The index number in the court below is 11141/1967.

2. The full names of the original parties are: Frederick Walz, plaintiff and Tax Commission of the City of New York, defendant. There has been no change in the parties.

3. The action was commenced in the Supreme Court, New York County.

4. The action was commenced June 15, 1967 by service of the summons and verified complaint. Defendant's verified answer was served on June 28, 1967.

5. The action is to enjoin the defendant from allowing religious organizations to be exempt from payment of the real estate tax assessed by defendant.

6. The appeal is taken from an order granting summary judgment dismissing the complaint and denying plaintiff's motion for summary judgment, entered March 5, 1968 and from the judgment entered thereon March 22, 1968.

7. The appendix method is not being used.

Summons

SUPREME COURT
OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

Index No. .....

Plaintiff designates New York County as the place of trial.

The basis of the venue is location of defendant's office.

Plaintiff resides at 60 East 42nd Street, County of New York.

FREDERICK WALZ,

Plaintiff,

—against—

TAX COMMISSION OF THE CITY OF NEW YORK,

Defendant.

To the above named Defendant

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney(s) within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure

to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated, New York City, June 14, 1967.

FREDERICK WALZ
Attorney pro se,
Office and Post Office Address
60 East 42nd Street
New York City 10017

Complaint

SUPREME COURT
OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

[SAME TITLE]

Plaintiff alleges:

First: That plaintiff is a citizen of the United States of America and sole owner in fee of real property located in the City and State of New York, designated as Lot 210, Section 1, Block 198, on the Tax Map of the County of Richmond.

Second: That defendant, at all times hereinafter mentioned, was and still is duly appointed, qualified and acting pursuant to authority of the City of New York, a municipal corporation created by act of the Legislature of the State of New York, and charged with the duty of assessing all real property situated within the City of New York lawfully subject to taxation.

Third: That defendant has assessed the real property mentioned in Paragraph First hereof for the tax year 1967-1968, commencing July 1, 1967 and the said action became final on March 15, 1967.

Fourth: That under the laws of the State of New York real property is taxable unless specifically exempted by law.

Fifth: That at all times herein mentioned defendant was required by law to inquire, investigate and determine which, if any, real property in the City of New York should be exempted from taxation.

Sixth: Upon information and belief, defendant granted tax exemptions to all religious corporations, as contemplated in law, for all real property owned by them and used for religious purposes, pursuant to Article 16 of the constitution of the State of New York, for the tax year commencing July 1, 1967.

Seventh: Upon information and belief that the action of the defendant, as set forth in the preceding paragraph, was illegal because in violation of the first and fourteenth amendments of the constitution of the United States of America.

Eighth: Plaintiff is a Christian and not a member of any religious organization as referred to herein, rejecting them as hostile, that the aforesaid tax exemption constitutes an involuntary payment by plaintiff to the aforementioned religious organizations, in violation of plaintiff's right of religious freedom, guaranteed to him under the constitution of the United States of America and that said action by defendant constitutes confiscation of plaintiff's property without due process of law, in violation of the provisions of the constitution of the United States of America.

Ninth: That plaintiff has no adequate remedy at law.

WHEREFORE plaintiff prays judgment that the tax exemption granted to religious organizations as set forth herein be declared illegal;

that defendant be restrained perpetually from granting such tax exemption;

that defendant be restrained, as above prayed, during the pendency of this action and

granting plaintiff such other and further relief as may be just and equitable; with costs.

FREDERICK WALZ,
Attorney pro se,
60 East 42nd Street,
New York City 10017

(Verified.)

Answer

SUPREME COURT
OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

[SAME TITLE]

The defendant, the Tax Commission of The City of New York, by its attorney, J. Lee Rankin, Corporation Counsel, for its answer to the complaint herein, respectfully alleges:

I. Denies that it has any knowledge or information sufficient to form a belief as to any of the allegations contained in paragraph "First" thereof.

II. Denies each and every allegation contained in paragraph "Fifth" of the complaint, and alleges that the Tax Commission of the City of New York ascertained all of the facts required by law necessary to determine the taxable status of the real property and what real property in the City of New York should be exempt from taxation.

III. Denies each and every allegation contained in paragraph "Sixth" of the complaint, and respectfully refers the Court to Article 4, Section 420 of the Real Property Tax Law, for the accurate meaning, intent and statement of the law. The Tax Commission of the City of New York was required to determine whether, under the Constitution of the State of New York and the provisions of the Real Property Tax Law, the real property of religious corpora-

tions within the City of New York were entitled to exemption from taxation.

IV. Denies each and every allegation contained in paragraph "Seventh" of the complaint.

V. Denies any knowledge or information sufficient to form a belief contained in that part of paragraph "Eighth" of the complaint which relates to plaintiff's religion. Denies each and every other allegation contained in the remainder of paragraph "Eighth" of the complaint.

VI. Denies each and every allegation contained in paragraph "Ninth" of the complaint.

As a First, Separate and Distinct Defense to the Complaint Herein:

VII. The Real Property Tax Law provides that the real property of a corporation or association organized exclusively (among other purposes) for religious purposes, and used exclusively for carrying out thereupon such purposes, should be exempt from taxation. The defendant, the Tax Commission of the City of New York is required to determine what real property in the City of New York should be exempt from taxation. The assessors, as required by law, annually inspect every parcel of real property including tax exempt property, and as to such property the inspection is directed to the ownership and use thereof.

VIII. Defendant ascertained all the facts required by law necessary to determine the taxable status of the said real property owned by religious corporations and duly determined that such properties were entitled to tax exemption pursuant to Article 4, Section 420 of the Real Property Tax Law.

As a Second, Separate and Distinct Defense to the Complaint Herein:

IX. The plaintiff did not file any application for correction of or protest against the determination of defendant on or before March 15, 1967, nor was such determination challenged in any manner whatsoever.

X. By reason of the premises, the determination of defendant exempting the properties of religious corporations from taxation become final and binding on March 15, 1967.

As a Third, Separate and Distinct Defense to the Complaint Herein:

XI. The complaint fails to set forth facts sufficient to constitute grounds for the relief sought or any other relief.

XII. The Court should not proceed in this action in the absence of the Attorney General as a party to this action pursuant to Section 71 of the Executive Law.

WHEREFORE, defendant respectfully prays that the complaint herein be dismissed with costs and disbursements of this action.

J. LEE RANKIN
Corporation Counsel
Attorney for Defendant Tax Commission of The City of New York
Office & P. O. Address:
Municipal Building
Borough of Manhattan
New York, N. Y. 10007

(Verified by E. J. McLaughlin, June 27, 1967.)

Notice of Motion for Summary Judgment

SUPREME COURT

NEW YORK COUNTY

[SAME TITLE]

SIR:

PLEASE TAKE NOTICE that upon the annexed affidavit of Frederick Walz, sworn to the eleventh day of December, 1967, the annexed exhibit and the Complaint and Answer herein the Plaintiff will move this Court under Civil Practice Law and Rules 3212-3, at A Special Term, Part I thereof, to be held in and for the County of New York at the County Courthouse, Foley Square, New York City, on the twenty-first day of December, 1967, at ten o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, for an order striking out defendant's Answer and directing the entry of summary judgment for plaintiff upon the cause of action set forth in the Complaint, and for such other and further relief as may be just and equitable.

Answering affidavits are required to be served on plaintiff's attorney on or before December 18, 1967.

Dated, New York City, December 11, 1967.

To:

J. Lee Rankin, Esq.,
Corporation Counsel,
Attorney for Defendant,
Municipal Building,
New York City.

Frederick Walz,
Attorney pro se,
60 East 42nd Street,
New York City 10017,
MU 2-3544.

Affidavit of Frederick Walz

SUPREME COURT

NEW YORK COUNTY

[SAME TITLE]

STATE OF NEW YORK,
COUNTY OF NEW YORK, SS.:

FREDERICK WALZ, being duly sworn, deposes and says:

That he is the plaintiff herein.

That the summons and verified complaint herein were duly filed in the office of the county clerk of New York County and are indexed No. 11141—1967.

On June 15, 1967 service of process was effected on the defendant and on June 28, 1967 an Answer was served on behalf of the defendant by J. Lee Rankin, Esq., Corporation Counsel. Copies of the pleadings are attached hereto.

All proceedings herein have been regular and there has been no amendment of pleadings.

This affidavit is made in support of plaintiff's motion to strike out the Answer on the ground that it is sham and insufficient and that there is no triable issue of fact.

This action is to enjoin defendant permanently from granting certain exemptions from real property taxes.

The Answer consists of denials and separate defenses.

Deponent believes that there is no valid defense to the cause of action set forth in the Complaint.

1. Defendant denies knowledge or information as to plaintiff's allegation that he is a citizen, although it has notice that plaintiff is a member of the New York Bar. Attached hereto and made part hereof is a photocopy of plaintiff's recorded deed to the real property mentioned in the Complaint.

II, III, IV, V and VI of defendant's denials do not, plaintiff submits, raise a triable issue of fact.

The First and Third Separate defenses do not, plaintiff submits, raise a triable issue of fact.

The defendant's Second Separate defense refers to an Article 78 proceeding and is not relevant in this plenary action.

WHEREFORE, plaintiff moves that the Answer of the defendant be stricken as sham and insufficient and that summary judgment be granted plaintiff for the relief demanded in the Complaint, and for such other and further relief as may be just and equitable.

FREDERICK WALZ

(Sworn to December 11, 1967.)

EXHIBIT ANNEXED TO FOREGOING AFFIDAVIT

[redacted]

THIS INDENTURE, made the 20th day of May [illegible] nineteen hundred and sixty Seven

BETWEEN

Miriam Burstein, residing at 230-14 Merrick Boulevard Laurelton County of Queens, City and State of New York

party of the first part, and

FREDERICK WALZ, residing at [illegible] 42nd Street County City and State of New York

party of the second part,

WITNESSETH that the party of the first part, in consideration of Ten Dollars and other valuable consideration paid by the party of the second part, does hereby grant and release unto the party of the second part, the heirs or successors and assigns of the party of the second part forever,

ALL [illegible] the buildings and improvements thereon erected, situate, lying and being [illegible] Rich[illegible] New York

[redacted]

TOGETHER with the appurtenances and all the estate and rights of the party of the first part, in and to said premises. TO HAVE AND TO HOLD the premises herein granted unto the party of the second part, the heirs or successors and assigns of the party of the second part forever.

AND the party of the first part covenants that the party of the first part has not done or suffered anything whereby the said premises have been encumbered in any way whatever, except as aforesaid.

AND the party of the first part, in compliance with Section 13 of the Lien Law, covenants that the party of the first part will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.

The word party shall be construed as if it read parties whenever the sense of this indenture so requires.

IN WITNESS WHEREOF, the party of the first part has duly executed this deed the day and year first above written.

IN PRESENCE OF:

Miriam Burstein

Affidavit of Daniel L. Cammarano in Opposition to Motion for Summary Judgment and in Support of Defendant's Request for Summary Judgment

SUPREME COURT
OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

[SAME TITLE]

STATE OF NEW YORK,
COUNTY OF NEW YORK, *ss.*:

DANIEL L. CAMMARANO, being duly sworn deposes and says:

1. That I am a Deputy Assistant Corporation Counsel in the office of the Corporation Counsel attorney for the defendant and conversant with the facts herein.

This affidavit is submitted in opposition to plaintiff's motion for summary judgment and in support of defendant's request for summary judgment.

2. That the defendant, the Tax Commission of the City of New York requests that pursuant to §3211 of the CPLR that the action herein be dismissed for failure to state a cause of action and also for failing to include as a necessary party herein the Attorney General of the State of New York.

3. Pursuant to Article 5 §71 of the Executive Law of the State of New York the court or justice before whom such

action or proceeding is pending, may make an order, directing the party desiring to raise the constitutionality of a statute to serve notice thereof on the attorney general permitting him to appear at any such trial or hearing in support of the constitutionality of such statute.

4. The plaintiff, attorney *pro se* states in his complaint that he is a citizen of the United States and the owner in fee of real property located in the County of Richmond, designated on the tax map as Section 1, Block 198, Lot 210.

5. Plaintiff further alleges in substance that the defendant Tax Commission granted tax exemption to all religious corporations for all real property owned and used by them for religious purposes pursuant to Article 16 of the State Constitution, for the tax year commencing on July 1, 1967.

6. Plaintiff further alleges in paragraph "SEVENTH" that the action of defendant in exempting the real property of religious corporations was violative of Amendments I and XIV of the Constitution of the United States.

7. Plaintiff further alleges that he is compelled to contribute "to the financial support of the aforesaid religious organizations which are private bodies, in violation of his religious freedom * * * , and that said action of defendant confiscates his property without due process of law."

8. Plaintiff further alleges that he has no adequate remedy at law. He seeks judgment that the tax exemption granted religious organizations be declared illegal, and that defendant be restrained perpetually and during the pendency of this action from granting tax exemption.

9. The plaintiff has failed to show that he has been deprived of his rights under the Amendment I of the Constitution of the United States which states:

> "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; * * * "

10. The plaintiff has failed to establish that Article 16 of the New York State Constitution and §420 of the Real Property Tax Law affects him injuriously and actually deprives him of any constitutional rights under either the I and XIV Amendments of the Constitution of the United States.

11. The property of religious institutions are exempted from taxation by law for the reason that it is the policy and the interest of the State to encourage them in the sense that they are contributing the fruits of their enterprise to society, and the municipality benefits by an amount approximately equal to the taxes which it does not collect.

12. The customary constitutional inhibition of any law respecting an establishment of religion etc., is not violated by an exemption of church property from taxation.

13. The States real property tax is for public purposes in order to secure revenue for the local governing powers and the individual is compensated by the special or general benefits which he receives from the existence and operations of the local governments.

14. The real property tax operates uniformly to all those subject to it as well as those who are exempt from taxes.

15. Article 16 of the New York State Constitution provides as follows:

"Subdivision 1.

Article 16, Section 1.

The power of taxation shall never be surrendered, suspended or contracted away, except as to securities issued for public purposes pursuant to law. • • •

Exemption from taxation may be granted only by general laws. Exemptions may be altered or repealed except those exempting real or personal property used exclusively for religious, educational or charitable purposes as defined by law and owned by any corporation or association organized or conducted exclusively for one or more of such purposes and not operating for profit."

16. Section 420, Subdivision 1 of the Real Property Tax Law provides in part as follows:

"Real property owned by a corporation or association organized exclusively for the moral or mental improvement of men and women, or for religious, bible, tracted, charitable, benevolent, missionary, hospital, infirmary, educational, public playgrounds, scientific, literary, bar association, library, patriotic, historical or cemetery purposes, • • • , and used exclusively for carrying out thereupon one or more of such purposes • • • shall be exempt from taxation as provided in this section."

17. The State Constitution, Article 16 and Section 420 of the Real Property Tax Law are not in conflict with

the I and XIV Amendments of the Constitution of the United States.

18. The plaintiff has failed to establish that he has been aggrieved or injured by the real estate tax exemptions accorded to religious organizations and associations made pursuant to Article 16 of the State Constitution and Section 420 of the Real Property Tax Law.

WHEREFORE, your deponent respectfully requests that this Court deny the plaintiffs' motion for summary judgment dismissing the complaint.

DANIEL L. CAMMARANO

(Sworn to December 15, 1967.)

Reply Affidavit of Frederick Walz

[SAME TITLE]

STATE OF NEW YORK,
COUNTY OF NEW YORK, *ss.*:

FREDERICK WALZ, being duly sworn, deposes and says:

That he is the plaintiff herein and denied the allegations in paragraphs 10 and 11 of defendant's answering affidavit, and cites the cruelty to animals and the interminable political activity of religious organizations as some of their conduct detrimental to the welfare of society.

Deponent submits that it is morality, not belief, which is of interest to society and that morality can exist independently of belief. Moreover, a person can be recognized as religious without being a member of any organization, according to the United States Supreme Court in U. S. v. Seeger, 85 Supreme Court Reporter 850, et seq.

It was the Founder of Christianity who said "Wherever two or three are gathered in My name, there am I."

The most distinguished American humanitarians—to name them chronologically—Dorothea Lynn Dix, Abraham Lincoln, Clara Barton, Henry Bergh, Jane Addams, Jacob Riis, Winifred Hoyt and Margaret Sanger were not identified with any religious organization. They carried enormous burdens because religious organizations did not meet their responsibility; sometimes, indeed, such organizations opposed their efforts. This is not to say that no humane persons belong to such organizations. However, history

throughout records unspeakable cruelty inflicted at the instigation of such organizations.

The remaining relevant parts of the Answering affidavit are disposed of, deponent contends, by the opinions of the Justices of the United States Supreme Court in the Everson case.

FREDERICK WALZ

JOSEPHINE CARLSON
Notary Public, State of New York

(Sworn to December 20, 1967.)

Order Appealed From

SUPREME COURT
STATE OF NEW YORK

COUNTY OF NEW YORK

SPECIAL TERM—PART I

[SAME TITLE]

Present:

HON. ARTHUR MARKEWICH,

Justice.

The following papers numbered 1 to 8 read on this motion Submitted

No. 160 on Calendar of Dec. 21, 1967.

	Papers Numbered
Notice of Motion—Exhibits—and Affidavits Annexed	1-5
Answering Affidavit and Answer	6-7
Replying Affidavit	8

Upon the foregoing papers this motion—by plaintiff for summary judgment against respondent Tax Commission is denied; cross-motion for summary judgment dismissing the complaint is granted. Though the procedure used by plaintiff is technically infirm, decision is on the merits. Plaintiff

an owner of property, sues to restrain defendant's grant of tax exemption to religious organizations (§420, R. P. Tax L.) as in contravention of the first and fourteenth amendments of the Constitution of the United States. No allegation is made that defendant proceeded otherwise than pursuant to law; rather, it is the law itself which is under attack. Such exemptions are granted in pursuance of long-standing, public policy of this State, under a statute which is presumptively constitutional, and which is hereby sustained.

Dated: March 5, 1968

ARTHUR MARKEWICH
J.S.C.

Judgment Appealed From

SUPREME COURT
OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

Reg. 580 Fol. 486

[SAME TITLE]

The defendant, Tax Commission of the City of New York, having cross-moved for summary judgment dismissing the complaint herein for failure to state a cause of action, pursuant to the provisions of Rule 3211 of the CPLR, and an order having been duly entered in the office of the Clerk of the Supreme Court, County of New York, on the 5th day of March 1968, granting the cross-motion, and dismissing the complaint, and the costs of the defendant, having been duly taxed at the sum of $25.00.

Now on motion of J. Lee Rankin, Corporation Counsel, attorney for defendant, Tax Commission of the City of New York, it is

ADJUDGED that the complaint be and the same hereby is dismissed, and it is further

ADJUDGED that the defendant, Tax Commission of the City of New York (Municipal Building, New York, N. Y. 10007) recover of the plaintiff Frederick Walz (60 East 42nd Street, New York, N. Y.) the sum of $25.00, costs as taxed, and that said defendant have execution therefor.

Judgment entered this 22nd day of March, 1968.

JAMES MCGURRIN
Clerk

mw4

BILL OF COSTS

New York Supreme Court,

COUNTY OF NEW YORK

FREDERICK WALZ

Plaintiff.

against

TAX COMMISSION OF THE CITY OF NEW YORK

Defendant.

Costs of the defendant

Rec. 580 Fee. 486 Tax

INDEX NUMBER 11141/67

COSTS			DISBURSEMENTS			
Costs before Note of Issue	25	00	Transcript and Filing			
" after " " "			Referee's Fees			
Trial Fee, Issue of Fact			Serving Summons and Complaint			
Allowance by Statute			Sheriff's Fees on Execution			
" " Court			Printing Cases Appellate Division			
Motion			" Points Appellate Division			
Costs Allowed by Appellate Term Order			" Cases Court of Appeals			
Costs Allowed by Appellate Division Order			" Points Court of Appeals			
Costs Allowed by Court of Appeals Order			Copy Stenographer's Minutes			
Appeal to Appellate Division before Argument			Remittitur			
" " " " for Argument			Telegrams			
" Court of Appeals before Argument						
" " " " for Argument						
			Attendance of Witnesses,	Miles	Days	
Disbursements						
Total	25	00				

I hereby certify that I have adjusted this bill of costs at

$ 25.00

MAR 22 1968

JAMES McGUINN

CLERK

State of New York, County of New York, ss.:

JOHN F. KELLY, being duly sworn, says that he is an attorney and counsellor-at-law in the office of the Corporation Counsel; that the foregoing disbursements have been made in this action, or will be necessarily incurred herein, and are reasonable in amount; that each of the persons above named as a witness was a necessary and material witness, subpoenaed in good faith, and attended as such on the trial of this action the number of days set opposite his or her name, and resided, and necessarily traveled, the number of miles set opposite his or her name, in going to the place of trial; and that copies of papers as charged herein were actually and necessarily obtained for use in this action; that the copy of stenographer's minutes was necessarily obtained and actually used in preparing amendments to plaintiff's proposed case on appeal; that the plaintiff did not lend or offer to lend a copy of said minutes to the defendant, to the best of his knowledge and belief.

Sworn to before me this

Notice of Appeal

SUPREME COURT
OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

Index 11141—1967

FREDERICK WALZ,

Plaintiff,

—against—

TAX COMMISSION OF THE CITY OF NEW YORK,

Defendant.

SIRS:

PLEASE TAKE NOTICE that the above-named plaintiff, Frederick Walz, hereby appeals to the Appellate Division of the Supreme Court of the State of New York, in and for the First Department, from an order entered in the above-entitled action on or about the fifth day of March, 1968, in the office of the Clerk of the County of New York, denying plaintiff's motion for summary judgment on the cause of action set forth in the complaint and granting defendant's cross-motion for summary judgment dismissing the complaint, and said plaintiff appeals from each and every part of said order as well as the whole thereof.

PLEASE TAKE FURTHER NOTICE that said above-named plaintiff, Frederick Walz, also hereby appeals to said Appellate Division from judgment entered in the above-entitled ac-

tion on or about the twenty-second day of March, 1968, in the office of the Clerk of the County of New York in favor of defendant, Tax Commission of the City of New York and against said plaintiff, Frederick Walz, and said plaintiff appeals from each and every part of said judgment as well as the whole thereof.

Dated: New York, March 27, 1968.

Yours, etc.,

FREDERICK WALZ,
Attorney for Plaintiff,
Office and Post Office Address
60 East 42nd Street
Borough of Manhattan
MU 2-3544

To:

J. LEE RANKIN, Esq.,
Corporation Counsel,
Attorney for Defendant,
Municipal Building,
Borough of Manhattan.

CLERK OF THE COUNTY OF NEW YORK.

Certification of Record in Appellate Division (omitted in printing).

Order of Affirmance Appealed From

At a term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on the 20th day of June, 1968.

Present:

HON. HAROLD A. STEVENS,
Justice Presiding,

" ARON STEUER,
" GEORGE TILZER,
" OWEN McGIVERN,
" BENJAMIN J. RABIN,
Justices.

13361

An appeal having been taken to this Court by the plaintiff-appellant from an order of the Supreme Court, New York County, entered on the 5th day of March, 1968, denying plaintiff's motion for summary judgment on the cause of action set forth in the complaint and granting defendant's cross-motion for summary judgment dismissing the complaint, and from the judgment entered in the office of the Clerk of the County of New York, on the 22nd day of March, 1968, and said appeal having been argued by Mr. Frederick Walz, of counsel for the appellant, and by Mr. Edith I. Spivack, of counsel for the respondent; and due deliberation having been had thereon,

It is hereby unanimously ordered and adjudged that the order and judgment so appealed from be and the same are hereby, in all things, affirmed; and that the respondent recover of the appellant $50 costs of this appeal.

Enter:

HYMAN W. GAMSO,
Clerk.

Affirmation of No Opinion in Appellate Division

I, FREDERICK WALZ, an attorney, hereby state that I am familiar with the facts, papers and proceedings herein, and that no opinion was rendered by the court below.

FREDERICK WALZ

Notice of Appeal to Court of Appeals

SUPREME COURT
OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

[SAME TITLE]

SIRS:

PLEASE TAKE NOTICE that the plaintiff above named, relying solely upon the question directly involving the construction of the provisions of the first and fourteenth amendments of the Constitution of the United States, hereby appeals as of right to the Court of Appeals of the State of New York from the order of the Appellate Division of the Supreme Court, First Department, entered in the office of the Clerk of said Appellate Division on the 20th day of June, 1968, which unanimously affirmed the order and judgment of the Supreme Court of New York County in the above-entitled proceeding, entered in the office of the Clerk of the County of New York on the 5th and 22nd days of March, 1968, respectively, denying plaintiff's motion for summary judgment on the cause of action set forth in the complaint and granting defendant's cross-motion for summary judgment dismissing the complaint and plaintiff ap-

peals from each and every part of the said order of the Appellate Division, as well as from the whole thereof.

July 2, 1968.

Yours, etc.,

FREDERICK WALZ,
Attorney for Plaintiff-Appellant, pro se,
60 East 42 Street
New York City 10017

To:

CLERK OF THE COUNTY OF NEW YORK,

J. LEE RANKIN, Esq.,
Corporation Counsel,
Attorney for defendant-respondent,
Municipal Building,
New York City.

Certification of Record in Court of Appeals (omitted in printing).

Remittitur

No. 362

(1968)

COURT OF APPEALS

STATE OF NEW YORK, *ss.*:

PLEAS in the Court of Appeals, held at Court of Appeals Hall, in the City of Albany, on the 20th day of February in the year of our Lord one thousand nine hundred and sixty-nine, before the Judges of said Court.

WITNESS,

The HON. STANLEY H. FULD,
Chief Judge, Presiding.
RAYMOND J. CANNON,
Clerk.

REMITTITUR February 20, 1969.

---

1. No. 362. 68

FREDERICK WALZ,

Appellant,

—VS.—

TAX COMMISSION OF THE CITY OF NEW YORK,

Respondent.

BE IT REMEMBERED, That on the 19th day of July in the year of our Lord one thousand nine hundred and sixty-eight, Frederick Walz, the appellant in this cause, came here unto the Court of Appeals, pro se, and filed in the said Court a Notice of Appeal and return thereto from the order of the Appellate Division of the Supreme Court in and for the First Judicial Department. And Tax Commission of the City of New York, the respondent in said cause, afterwards appeared in said Court of Appeals by J. Lee Rankin, its attorney.

Which said Notice of Appeal and the return thereto, filed as aforesaid, are hereunto annexed.

WHEREUPON, The said Court of Appeals, this cause having been submitted, after due deliberation had thereon, did order and adjudge that the order of the Appellate Division of the Supreme Court appealed from herein be and the same hereby is affirmed, with costs.

And it was also further ordered, that the records aforesaid, and the proceedings in this Court, be remitted to the Supreme Court of the State of New York, there to be proceeded upon according to law.

THEREFORE, it is considered that the said order be affirmed, with costs, as aforesaid.

And hereupon, as well the Notice of Appeal and return thereto aforesaid as the judgment of the Court of Appeals aforesaid, by it given in the premises, are by the said Court of Appeals remitted into the Supreme Court of the State of New York before the Justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now re-

mains in the said Supreme Court, before the Justices thereof, &c.

RAYMOND J. CANNON
Clerk of the Court of Appeals
of the State of New York.

COURT OF APPEALS, CLERK'S OFFICE,
Albany, February 20, 1969.

I HEREBY CERTIFY, that the preceding record contains a correct transcript of the proceedings in said cause in the Court of Appeals, with the papers originally filed therein, attached thereto.

(Seal)

RAYMOND J. CANNON
Clerk.

Opinion of the Court of Appeals of the State of New York

Unrevised and
Uncorrected. Not
For Publication.

STATE OF NEW YORK
COURT OF APPEALS

1. No. 362. 68

FREDERICK WALZ,

Appellant,

vs.

TAX COMMISSION OF THE CITY OF NEW YORK,

Respondent.

PER CURIAM:

Firmly embedded in the law of this State, both by Constitution (art. XVI, §1) and by statute (Real Property Tax Law, §420), is the doctrine that real property owned by a religious corporation and used exclusively for religious purposes is exempt from taxation (see, e.g., *People ex rel. Watchtower Bible & Tract Soc.* v. *Haring,* 8 N Y 2d 350, 357-358; *People ex rel. Church of St. Mary* v. *Feitner,* 168 N. Y. 494, 497) and research discloses—and the 2½ page brief of the plaintiff-appellant herein cites no authority to the contrary—that courts throughout the country have long and consistently held that the exemption of such real property from taxation does not violate the Constitution of

the United States. (See, e.g., *Trustees of Griswold College* v. *State of Iowa,* 46 Iowa 275, 282 [1877]; *Methodist Episcopal Church, South* v. *Hinton,* 92 Tenn. 188 [1892]; *Garrett Biblical Institute* v. *Elmhurst State Bank,* 331 Ill. 308 [1928]; *Lundberg* v. *County of Alameda,* 46 Cal. 2d 644, app. dismd. 352 U. S. 921 [1956]; *General Finance Corp.* v. *Archetto,* 93 R. I. 392, app. dismd. 369 U. S. 423 [1962]; *Murray* v. *Comptroller of the Treasury,* 241 Md. 383, cert. den. 385 U. S. 865 [1966]; see, also *Abington School District* v. *Schempp,* 374 U. S. 203, 301 [*per* Brennan, J., concurring [1963]]. But see, contra, *Engel* v. *Vitale,* 370 U. S. 421, 437, *per* Douglas, J., concurring [1962].) We see no reason for departing from this conclusion in this case.

The question of the plaintiff's standing to maintain this action has not been raised.

The order appealed from should be affirmed, with costs.

• • • • •

Order affirmed, with costs. Opinion Per Curiam. All concur, Burke, J., in result.

Notice of Appeal

SUPREME COURT

NEW YORK COUNTY

Index No. 11141—67

FREDERICK WALZ,

Plaintiff-appellant,

against

TAX COMMISSION OF THE CITY OF NEW YORK,

Defendant-appellee.

TO THE SUPREME COURT OF THE UNITED STATES:

NOTICE IS HEREBY GIVEN that Frederick Walz, the plaintiff-appellant above named, hereby appeals to the Supreme Court of the United States from the final judgment and order of the New York Court of Appeals, affirming the order of the Appellate Division of the Supreme Court, entered in this action February 20, 1969 and the order of remittitur filed in the office of the Clerk of the County of New York on March 4, 1969.

This appeal is taken pursuant to 28 U. S. Code, Sec. 1257(2).

New York City, April 4, 1969

FREDERICK WALZ,
Plaintiff-appellant pro se
60 East 42 Street
New York City 10017

To:

J. LEE RANKIN, Esq.,
Corporation Counsel,
Attorney for Defendant-appellee,
Municipal Building,
New York City.

COUNTY CLERK, NEW YORK COUNTY.

Affidavit of Service

STATE OF NEW YORK,
COUNTY OF NEW YORK, ss.:

I, FREDERICK WALZ, plaintiff-appellant, being duly sworn depose and say that on the 4th day of April, 1969 I served a copy of the foregoing Notice of Appeal to the Supreme Court of the United States on the Tax Commission of the City of New York, defendant-appellee herein, by delivering the same to the clerk designated by defendant-appellee's attorney to receive service of papers in the office of J. Lee Rankin, Esq., counsel of record for said defendant-appellee, located in the Municipal Building, New York City.

Acknowledgment of said service is made by said counsel, indicated by time-clock stamp appearing on the face of the said Notice of Appeal.

All parties required to be served have been served.

Subscribed and sworn to before
me this 4th day of April, 1969.

FREDERICK WALZ

JACOB ROTTER
(Notary Stamp)

Supreme Court of the United States

No. 1415 ---- , *October Term, 19* 68

Frederick Walz,

Appellant,

v.

Tax Commission of the City of New York

APPEAL from the Court of Appeals of the State of New York.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is placed on the summary calendar.

June 16, 1969